

United States Customs Service, Treasury

§ 133.23a

importer to establish that any of the circumstances described in § 133.21(c) are applicable.

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(d) *Notice of detention.* * * *

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§ 133.23 Release of detained articles.

(a) *General.* Articles detained in accordance with § 133.22 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction set forth in § 133.21(c) are established.

(b) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(1) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(2) The request of the importer to obtain skillful removal of the marks is granted by the port director on such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) The provisions of paragraphs (b) (1) and (2) are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.23a) or to trademarked articles exempt from import restrictions under section 526(d), Tariff Act of 1930, as amended (19 U.S.C. 1526(d)) (see § 148.55 of this chapter).

(c) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at \$250 or less may be exported or destroyed at the request of the addressee or may be released if:

(1) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(2) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the port director on such conditions as he may deem necessary, and upon return

of the article to Customs for verification, the marks are found to be satisfactorily removed.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979; T.D. 97-82, 62 FR 51770, Oct. 3, 1997]

§ 133.23a Articles bearing counterfeit trademarks.

(a) *Definition.* A “counterfeit trademark” is a spurious trademark which is identical with, or substantially indistinguishable from, a registered trademark.

(b) *Seizure.* Any article imported into the United States bearing a counterfeit trademark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the Customs laws.

(c) *Notice to trademark owner.* When merchandise is seized under this section, Customs shall disclose to the owner of the trademark the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved;
- (5) The name and address of the manufacturer;
- (6) The country of origin of the merchandise;
- (7) The name and address of the exporter; and
- (8) The name and address of the importer.

(d) *Samples available to the trademark owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the trademark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must

return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark owner, the owner shall, in lieu of return of the sample, certify to Customs that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.23a(d) was (damaged/destroyed/lost) during examination, testing, or other use.”

(e) *Failure to make appropriate disposition.* Unless the trademark owner, within 30 days of notification, provides written consent to importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with § 133.52, subject to the importer’s right to petition for relief from the forfeiture under the provisions of part 171 of this chapter.

[T.D. 79–159, 44 FR 31968, June 4, 1979, as amended by T.D. 98–21, 63 FR 11999, Mar. 12, 1998]

EFFECTIVE DATE NOTE: T.D. 98–21, 63 FR 11999, Mar. 12, 1998, § 133.23a, was amended by redesignating paragraph (c) as paragraph (e); adding new paragraphs (c) and (d); and revising the heading and removing the first sentence of newly designated paragraph (e), effective Apr. 13, 1998. For the convenience of the user, the superseded text is set forth as follows:

133.23a Articles bearing counterfeit trademarks.

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(e) *Notice to trademark owner.* The owner of the trademark shall be notified of the seizure and the quantity of the articles seized. * * *

§ 133.24 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of § 133.21, the port director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the merchandise is not redelivered to Customs cus-

tody, a claim for liquidated damages shall be made in accordance with § 141.113(g) of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 74–227, 39 FR 32023, Sept. 4, 1974; T.D. 84–213, 49 FR 41183, Oct. 19, 1984]

§ 133.25 Civil fines for those involved in the importation of counterfeit trademark goods.

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit American trademark as follows:

(a) *First violation.* For the first seizure of such merchandise, the fine imposed shall not be more than the domestic value of the merchandise, (see, § 162.43(a) of this chapter), as if it had been genuine, based on the manufacturer’s suggested retail price of the merchandise at the time of seizure.

(b) *Second and subsequent violations.* For the second and any subsequent seizure of such merchandise, the fine imposed shall not be more than twice the value of the merchandise as if it had been genuine, as determined by the manufacturer’s suggested retail price of the merchandise at the time of seizure.

[T.D. 97–91, 62 FR 61232, Nov. 17, 1997]

Subpart D—Recordation of Copyrights

§ 133.31 Recordation of copyrighted works.

(a) *Eligible works.* Claims to copyright which have been registered in accordance with the Copyright Act of July 30, 1947, as amended, or the Copyright Act of 1976, as amended, may be recorded with Customs for import protection.

(b) *Persons eligible to record.* The copyright owner, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, and claims actual or potential injury because of actual or contemplated importations of copies